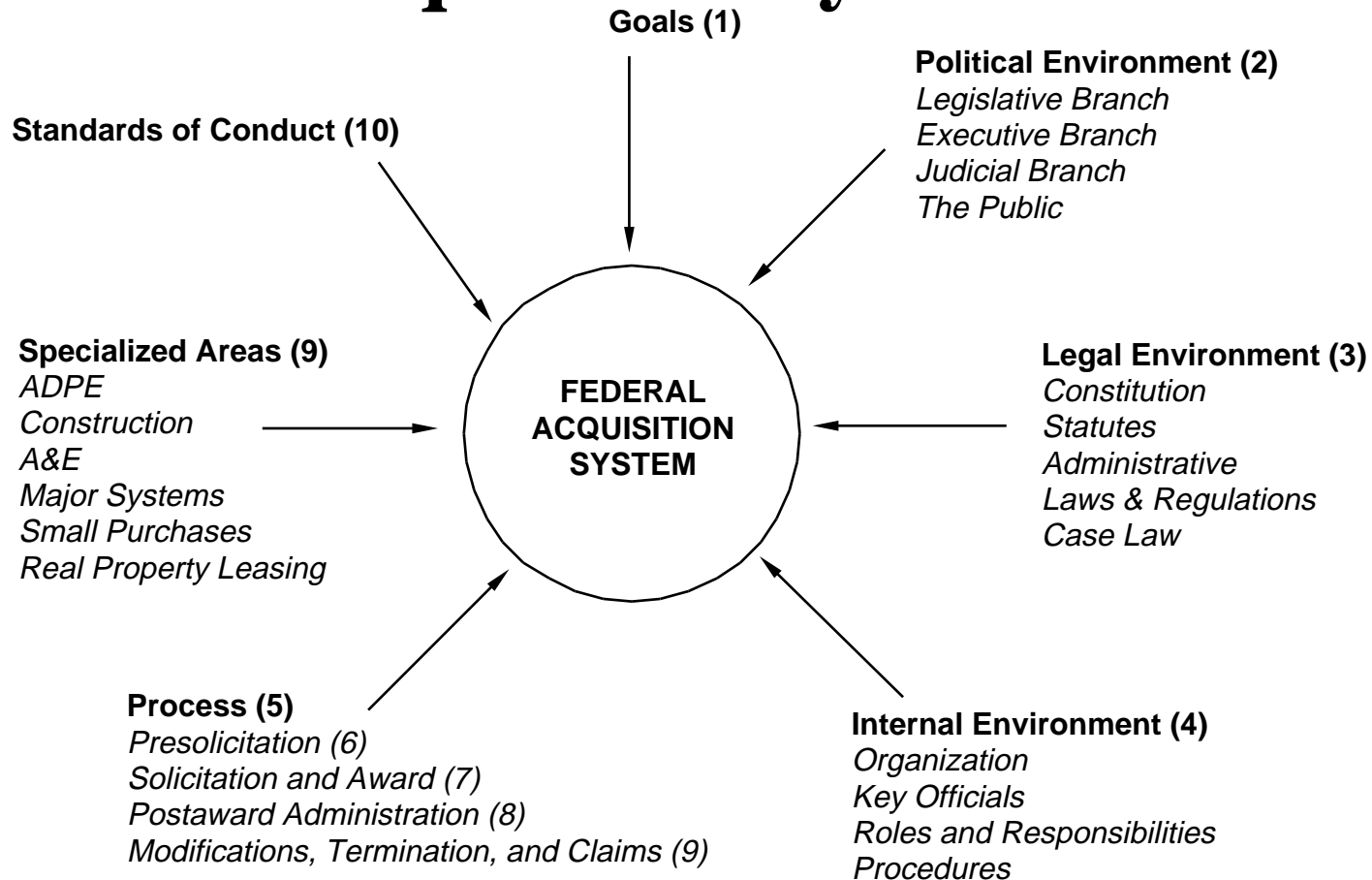


Components of the Federal Acquisition System



Elements of a Contract

- **Offer**
- **Acceptance**
- **Consideration**
- **Execution by Competent Parties**
- **Legality of Purpose**
- **Clear Terms and Conditions**

Goals of Federal Acquisition Process

Preadward Goals

- **Obtain the optimum market response to requirements for supplies/services, in terms of:**
 - **Quality**
 - **Timeliness**
 - **Cost**

- **While:**
 - **Accomplishing socioeconomic objectives**
 - **Minimizing business and technical risks**
 - **Maximizing competition**
 - **Maintaining Integrity**

Socioeconomic Objectives

Examples:

- **Use small and small/disadvantaged business firms**
- **Use business firms in labor surplus areas**
- **Pay prevailing wage**
- **Clean the environment**
- **Provide employment opportunities for Americans**
- **Ensure equal employment opportunity**
- **Get drugs out of the workplace**

Goals of Federal Acquisition Process

Postaward Goals

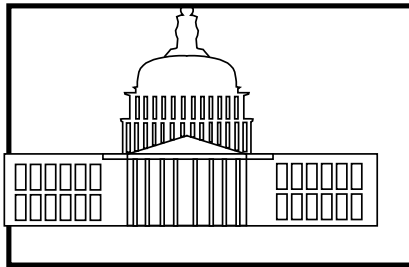
Assure that purchased supplies/services are:

- **Delivered or performed when and where specified in the contract**
- **Acceptable, in terms of conforming to the contract's specifications or statement of work**
- **Furnished in compliance with other terms and conditions of the contract**

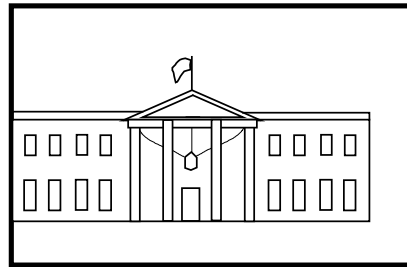
ENVIRONMENTAL FACTORS

- **Political**
- **Legal**
- **Internal**
- **Market**

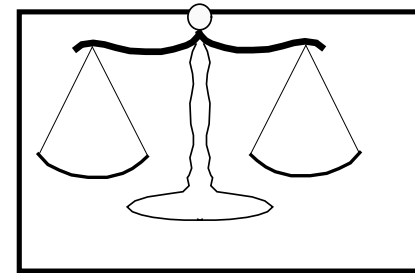
Government Affects Acquisition Process



**Legislative
Branch**



**Executive
Branch**



**Judicial
Branch**

Acquisition Process

Legislative Branch (Congress)

Roles Relating to Acquisition:

- **Passes Laws**
- **Appropriates Money**

Executive Branch (The President)

Roles Relating to Acquisition:

- **Develops plans, programs, and budgets for consideration by Congress**
- **Executes budgets - implements Congressional authorized plans and programs**
- **Supplements and augments statutory acquisition policies**
- **Develops and maintains the Federal acquisition regulatory system**

Judicial Branch (The Courts)

Roles Relating to Acquisition:

- **Give meaning to (or serve to interpret):**
 - **Laws passed by the legislative branch, or**
 - **Policies and regulations originated by the executive branch**
- **Render decisions pertaining to the terms and conditions of a specific contract**
- **Ensure the constitutionality of the laws and interpret the laws**

Public Participation

Roles Relating to Acquisition:

- **Influence Congress to pass or alter legislation**
- **Comment on proposed rules**
- **Participate in the acquisition process as suppliers**
- **Are clients of Federal programs and contracts that support those programs**

Sources of Federal Contract Law

- **The Constitution**
- **Statutes**
- **Administrative Law**
- **Common Law**

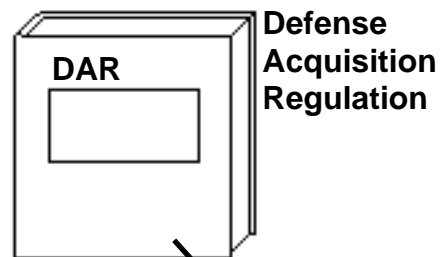
The Federal Acquisition Regulatory System

Federal Acquisition Regulation (FAR) + **Agency Supplements to the FAR** + **Internal Agency Guidance** = **Federal Acquisition Regulatory System**

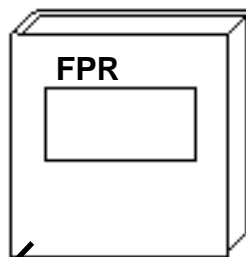


Includes:

- **Delegations of authority**
- **Assignments of responsibility**
- **Work-flow procedures**
- **Internal reporting requirements**

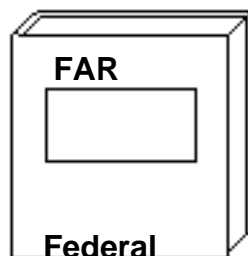


**Defense
Acquisition
Regulation**



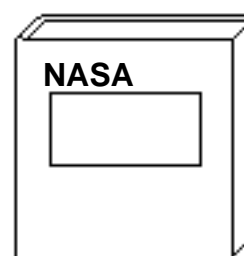
**Federal
Procurement
Regulation**

**Merged to
become:**

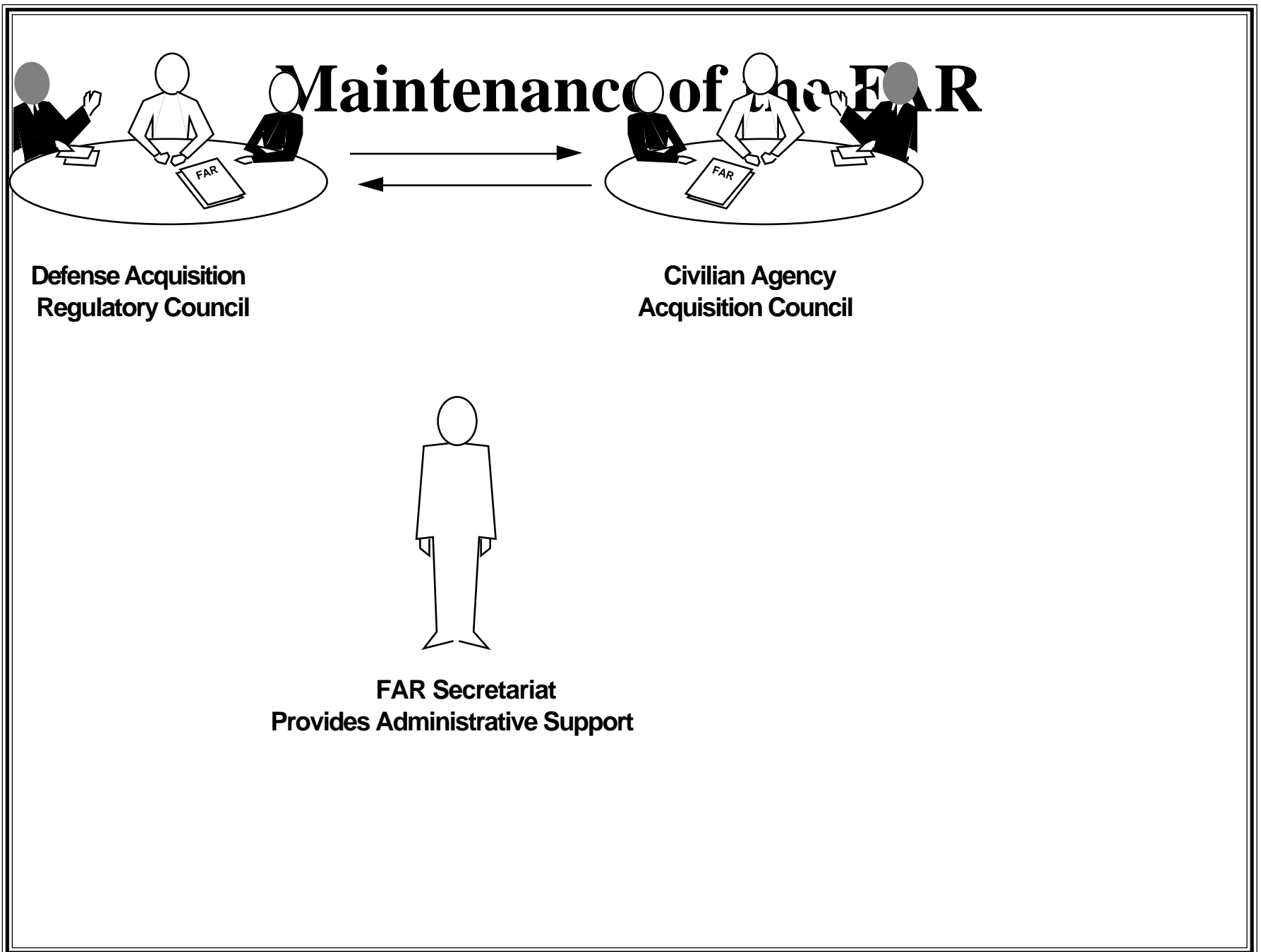


**Federal
Acquisition
Regulation**

Also included



**NASA Procurement
Regulations and
Procurement Regulations of
other Executive Agencies**



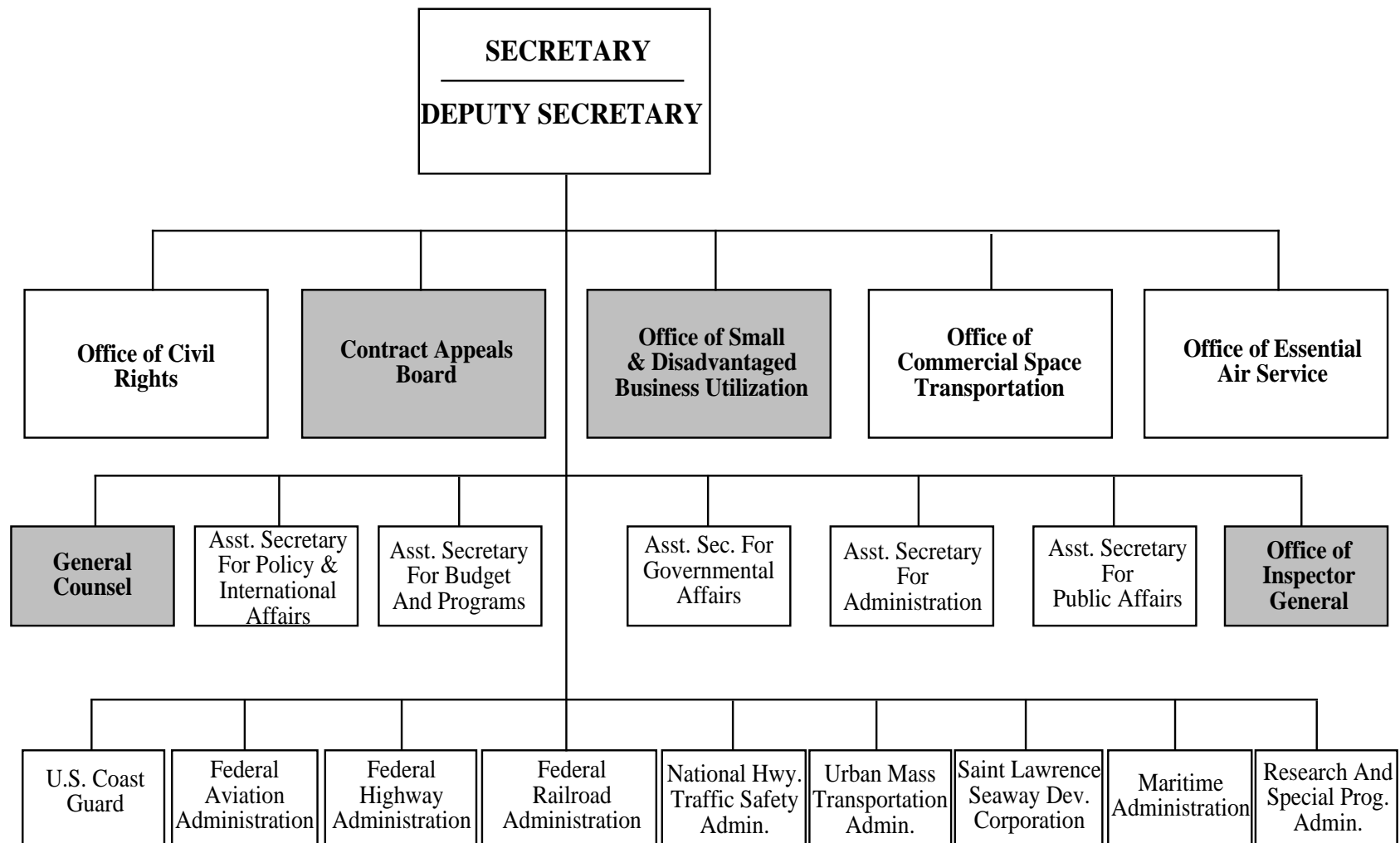
FAR Organizations

Parts 1-4	Subchapter A -- General
Parts 5-12	Subchapter B -- Acquisition Planning
Parts 13-18	Subchapter C -- Contracting Methods and Contract Types
Parts 19-26	Subchapter D -- Socioeconomic Programs
Parts 27-33	Subchapter E -- General Contracting Requirements
Parts 34-41	Subchapter F -- Special Categories of Contracting
Parts 42-51	Subchapter G -- Contract Management
Parts 52-53	Subchapter H -- Clauses and Forms
Parts 54-99	Reserved

FAR Organization

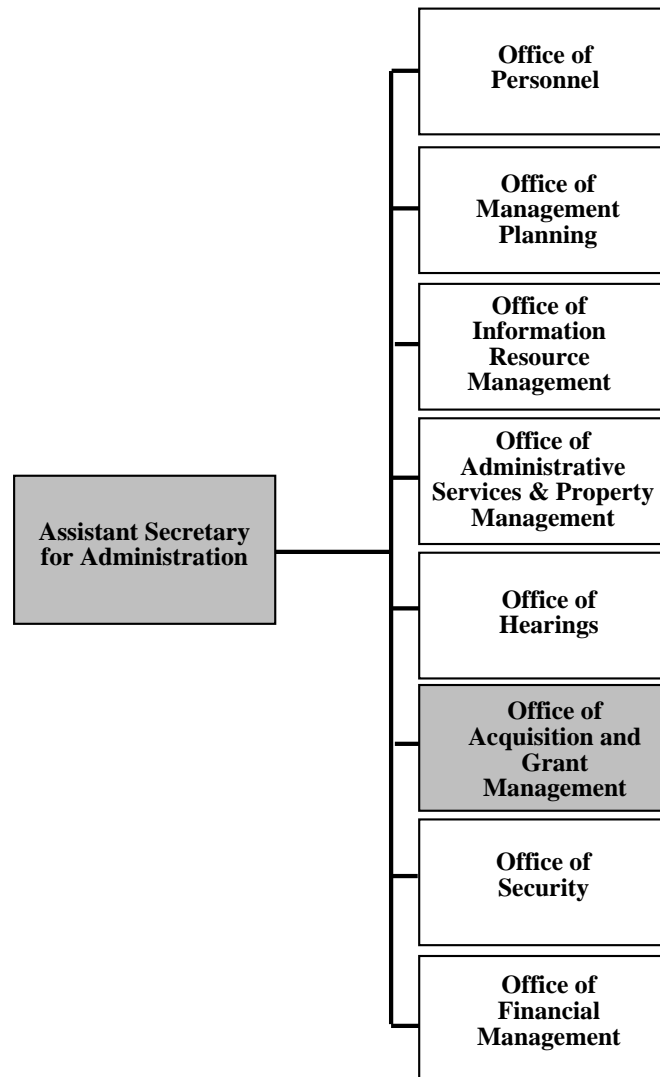
<u>FAR Divisions</u>	<u>FAR #</u>	<u>Example</u>
Part	<u>14</u>	Sealed Bidding
Subpart	14. <u>1</u>	Use of Sealed Bidding
Section	14.10 <u>3</u>	Policy
Subsection	14.103- <u>1</u>	General

U.S. Department of Transportation

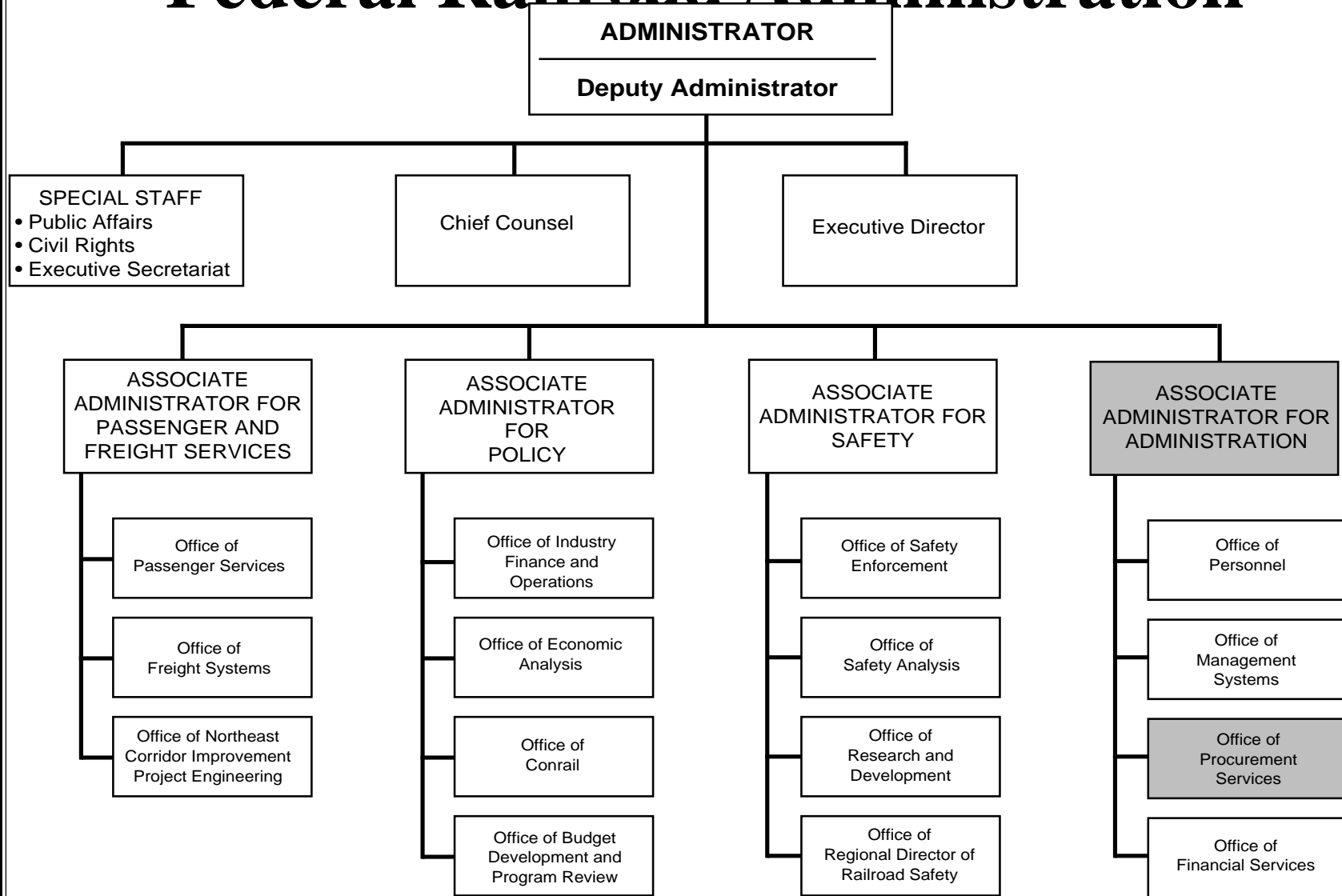


U.S. Department of Transportation

Asst. Secretary for Administration



Federal Railroad Administration



Contracting Officers

- **PCO**
- **ACO**
- **TCO**

Contracting Personnel (GS-1102)

- **Contract Specialist**
- **Contract Negotiator**
- **Contract Administrator**
- **Contract Price/Cost Analyst**
- **Contract Termination Specialist**
- **Procurement Analyst**

Contracting Officer Representatives

- **COR**
- **COTR**

Other Acquisition Personnel

- **Program/Requirements Managers**
- **Quality Assurance Specialists**
- **Transportation, Logistics, and Supply Specialists**
- **Property Managers**
- **Auditors and Accountants**

Other Acquisition Personnel (Con't)

- **Legal Counsel**
- **Small Business Advocates**
- **Competition Advocates**
- **Other Interested Parties**

Presolicitation Functions

- 1. Determination of Need**
- 2. Initiating the Procurement**
- 3. Analysis of Requirement**
- 4. Sourcing**

Solicitation-Award Functions

- 1. Solicitation**
- 2. Evaluation**
- 3. Award**

Post-Award Functions

- 1. Start-Up**
- 2. Quality Assurance**
- 3. Payment and Accounting**
- 4. Closeout**
- 5. Contract Modification**
- 6. Termination**
- 7. Claims**

The Federal Acquisition Process Chart

Presolicitation and Solicitation-Award Phases

THE ACQUISITION PROCESS

PRESOLICITATION PHASE				SOLICITATION-AWARD PHASE			
DETERMINATION OF NEED	INITIATING THE PROCUREMENT	ANALYSIS OF REQUIREMENT	SOURCING	SOLICITATION	EVALUATION Sealed Bidding Negotiation		AWARD
Determination of Need Forecasting Requirements Acquisition Planning	Processing the PR Purchase Requests Funding Market Research Market Research	Analysis of Requirements Specifications Statements of Work Services	Extent Of Competition Required Sources Set Asides 8(a) Procurements Competition Requirements Unsolicited Proposals Selection Factors Lease vs. Purchase Price Related Factors Technical Evaluation Factors Procurement Method Method Of Procurement Procurement Planning Procurement Plans	Terms and Conditions Contract Types Letter Contracts Contract Financing Use of Government Property Bonds (need for bonds) Solicitation Preparation Soliciting Offers Publicizing Proposed Procurements Preaward Inquiries Prebid/Preproposal Conferences Amending Solicitations Cancelling Solicitations	Bid Evaluation Processing Bids Time Extensions For Bids Late Bids Bid Prices Responsiveness	Proposal Evaluation Processing Proposals Technical Evaluation Price Objectives Cost and Pricing Data Audits Cost Analysis Evaluating Other Terms and Conditions Competitive Range Discussions Factfinding Negotiation Strategy Conducting Negotiations	Selection for Award Mistakes In Offers Responsibility Subcontracting Goals Preparing Awards Executing Awards Award Debriefing Protests Protests Fraud Fraud And Exclusion

The Federal Acquisition Process Chart

Post-Award Phase and Modifications, Termination and Claims

THE ACQUISITION PROCESS

POST-AWARD ADMINISTRATION PHASE				SPECIALITIES			
START-UP	QUALITY ASSURANCE	PAYMENT AND ACCOUNTING	CLOSEOUT	CONTRACT MODIFICATION	TERMINATION	CLAIMS	SPECIALIZED AREAS
Planning Contract Administration Planning Post-Award Orientations Ordering Orders Against Contracts/Agreements) Subcontracting Consent To Subcontracts	Monitoring and Problem Solving Monitoring, Inspection and Acceptance Delays Stop Work Remedies A. Selection B. Cure or show cause notice C. Liquidated damages D. Rejection of work E. Express warranty or guarantee F. Implied warranty G. Latent defects Property Property Administration Reporting Performance Problems Fraud And Exclusion	Payment Limitation Of Costs Invoices Unallowable Costs Assignment Of Claims Collecting Contractor Debts Progress Payments Price and Fee Adjustments Accounting and Defective Pricing Accounting and Cost Estimating Systems Cost Accounting Standards Defective Pricing	Closeout Closeout	Modifications/Options Contract Modifications A. Contract Modifications B. Exercising Options	Termination Termination A. Determine whether to terminate for convenience or default B. Terminating for convenience C. Terminating for default Bonds (administering bonds)	Claims Claims	ADP/Telecommunications Construction A&E Systems Procurement Simplified Purchasing Real Property Leasing

Elements Of A Typical Acquisition Plan

1. Acquisition Background and Objectives

-
-
-
-
-

2. Plan of Action

-
-
-
-
-

Specifications

Place X in Appropriate Area

Examples of Specs	Functional	Performance	Design
1. Bathroom must include bathtub and separate shower (SEE BLUEPRINTS)			
2. Provide gasoline powered generator capable of providing ___ watts at ___ amps of electricity for 24 hours on a single 30 gallon tank of fuel			
3. Provide a communication system between construction site and program office			
4. 200 doz. cookies must be IAW FED Spec XYZ			
5. Develop a system for monitoring the nose cone during reentry			
6. Provide 300 tons of steel capable of resisting high temperature to 200° F without breakdown			
7. "Janitorial work" includes dusting, vacuuming, and emptying trash			

Statement of Work

Which items are included in a statement of work?

Yes/No	
1. Packing, packaging, and marking requirements	
2. Names of contracting officials	
3. Contract clauses and solicitation provisions	
4. Delivery schedules or period of performance	
5. General scope of work/objectives	
6. Reporting requirements	
7. Inspection and acceptance criteria	
8. Contractor tasks	
9. Small Disadvantaged Business requirements	
10. Specifications for each deliverable	

Set-Aside Priorities

- 1. Total set-aside for small businesses located in labor surplus areas**
- 2. Total set-aside for small businesses**
- 3. Partial set-aside for small businesses located in labor surplus areas**
- 4. Partial set-aside for small businesses**
- 5. Total labor surplus area set-aside for all concerns located in labor surplus areas**

Other Than FAOC

Choose which have statutory authority
for permitting other than FAOC

	Allow/Do not allow
<p>1. Public interest</p> <p>2. Unusual and compelling urgency</p> <p>3. Only one responsible source and no other supplies/services will satisfy agency requirements</p> <p>4. Only one bid submitted</p> <p>5. National security</p> <p>6. Price reasonableness cannot be determined</p>	

Evaluation Factors

	Price Related	Technical
1.	Expected Life	
2.	Technical approach	
3.	Installation capability	
4.	Operating costs	
5.	Scheduling of work	
6.	Experience	
7.	Qualifications of Key Personnel	
8.	Mean time between failures	
9.	Maintenance and Repair	
10.	Buy American Act	

Conditions for the Use of Sealed Bidding

- **Expectation of receiving more than one sealed bid**
- **Sufficient time to prepare an IFB, receive and evaluate bids, and make award**
- **Competition solely on price and price-related factors—no technical ranking factors**
- **No discussions necessary**

Milestones

Milestones tracked when soliciting and evaluating offers include:

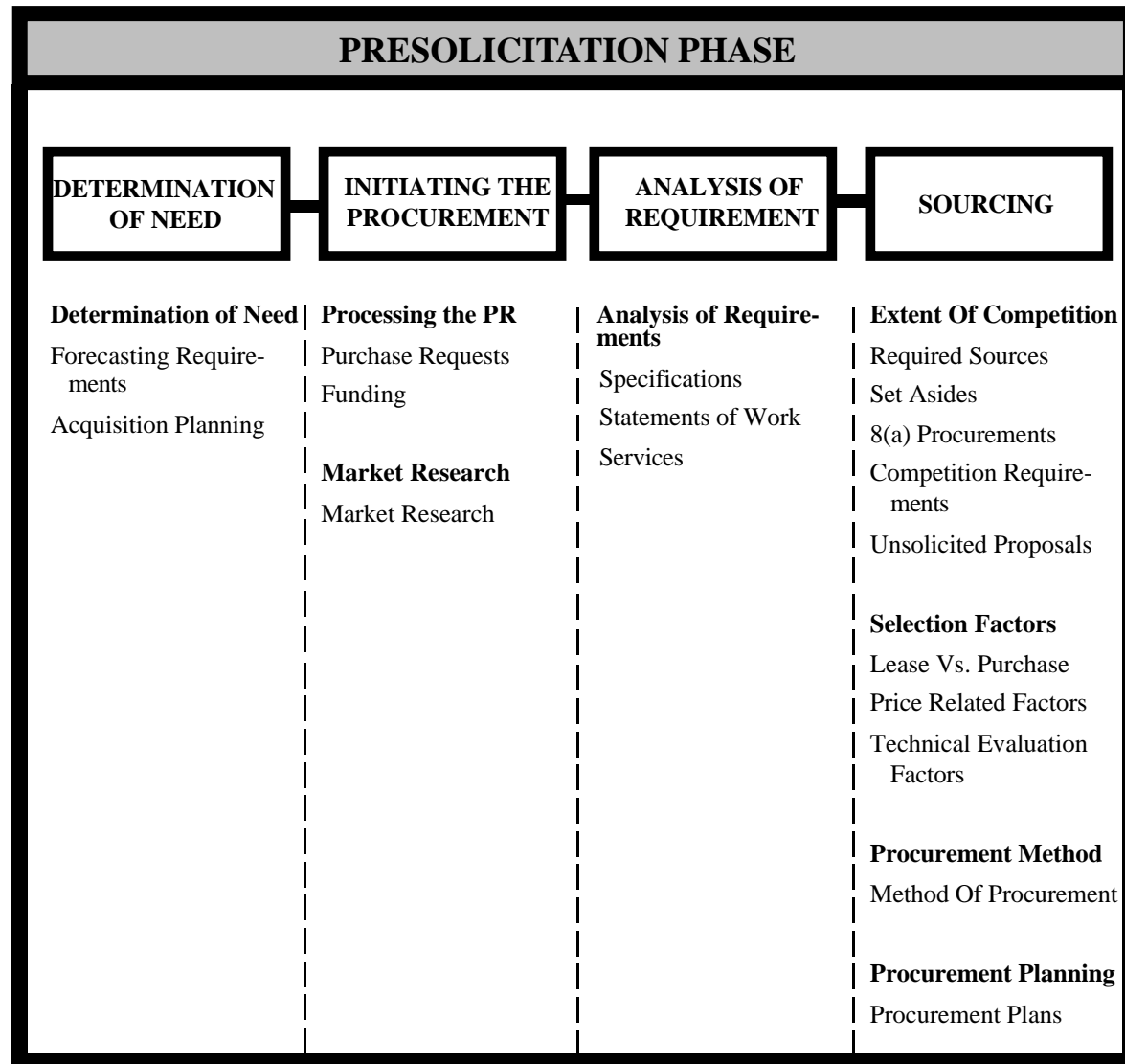
Responsibility of	
1. Complete RFP	
2. Forward CBD synopsis	
3. Mail RFP	
4. Submit by closing date	
5. Open bids	
6. Complete price analysis	
7. Complete technical analysis	
8. Rank offers on technical factors	
9. Establish initial competitive range	

Milestones

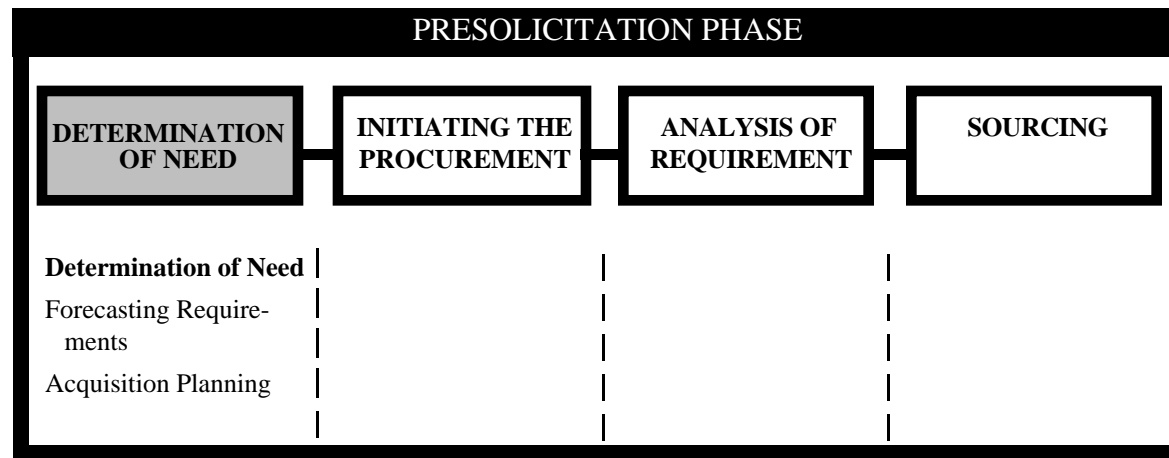
Milestones tracked when soliciting and evaluating offers include:

Responsibility of	
10. Begin discussions	
11. Conclude discussions	
12. Due date for BAFOs	
13. Rank BAFOs on technical factors	
14. Identify the top ranked BAFO based on both technical factors and price	
15. Recommend award to the SSA	
16. Prepare contract	
17. Execute contract	

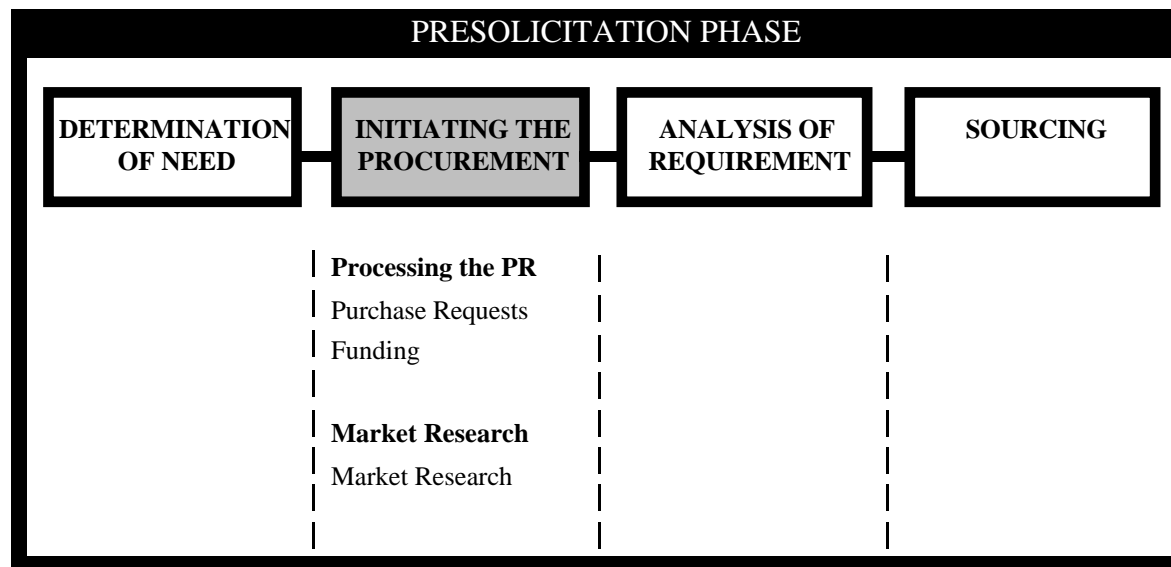
Presolicitation Phase



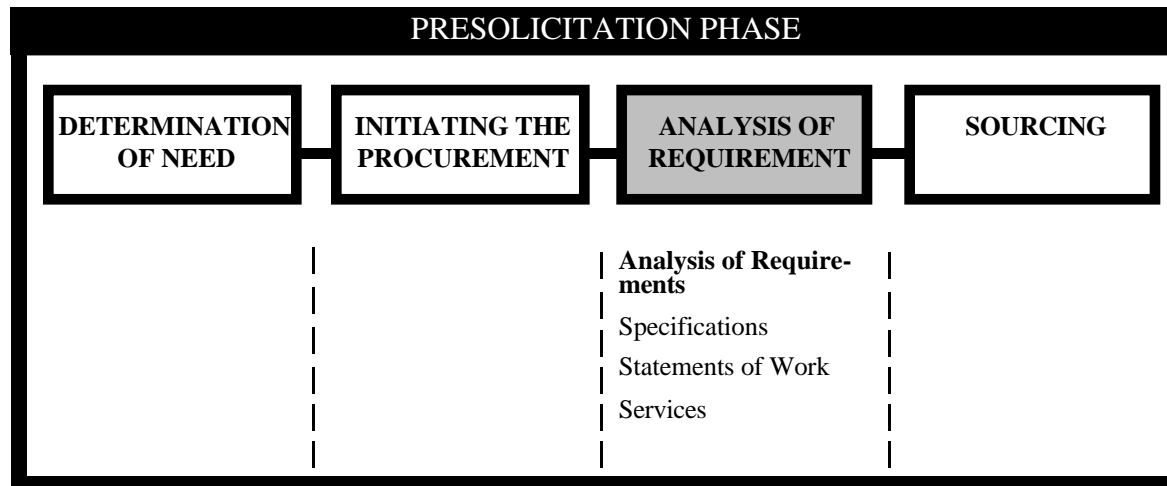
Determination of Need



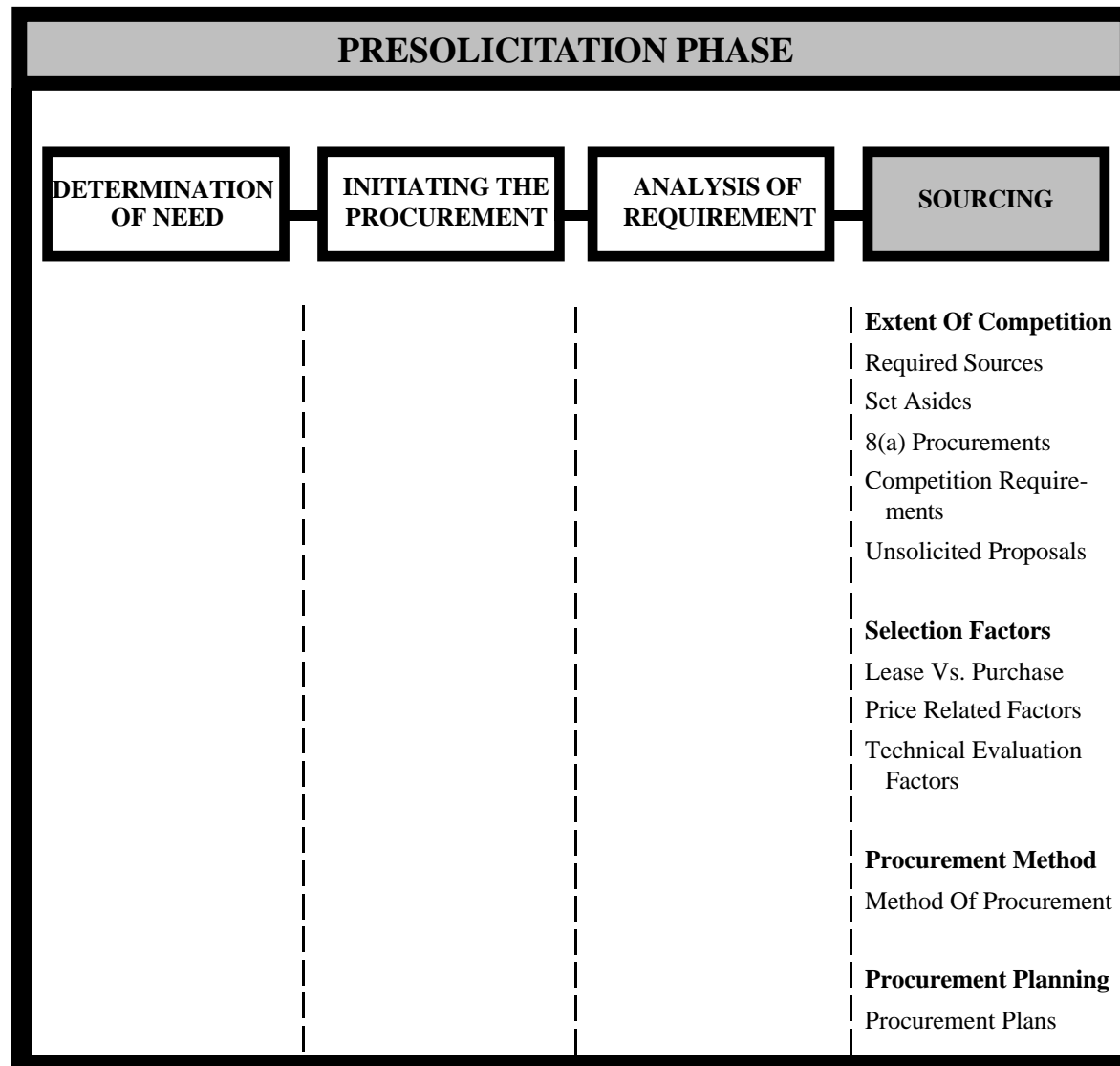
Initiating the Procurement



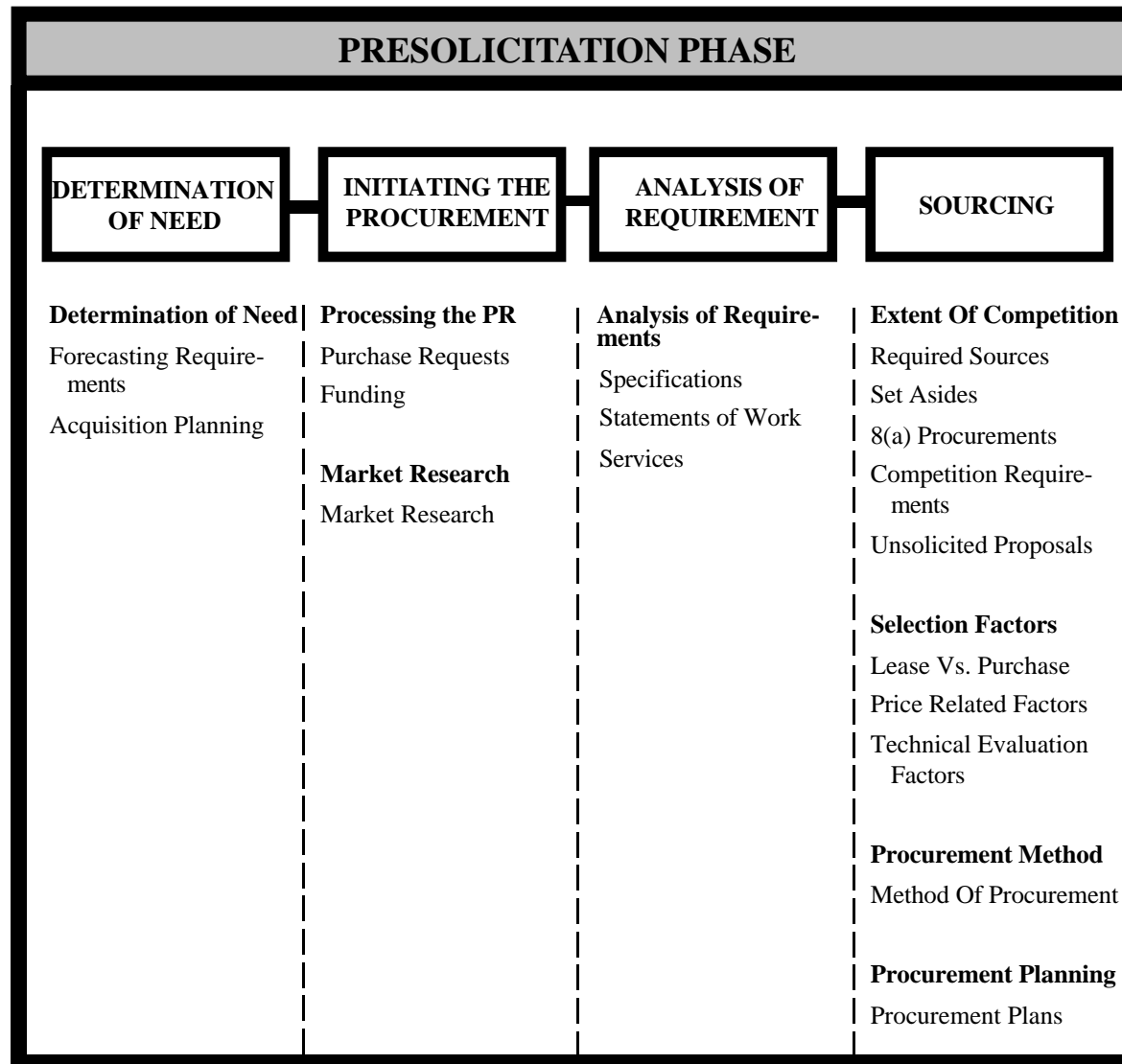
Analysis of Requirements



Sourcing



Presolicitation Phase



Solicitation-Award Phase

SOLICITATION--AWARD PHASE			
SOLICITATION	EVALUATION		AWARD
	Sealed Bidding	Negotiation	
Terms and Conditions	Bid Evaluation	Proposal Evaluation	Selection for Award
Contract Types	Processing Bids	Processing Proposals	Mistakes In Offers
Letter Contracts	Time Extensions For Bids	Technical Evaluation	Responsibility
Contract Financing	Late Offers	Price Objectives	Subcontracting Goals
Use of Government Property And Supply Sources	Bid Prices	Cost and Pricing Data Audits	Preparing Awards
Bonds (need for bonds)	Responsiveness	Cost Analysis	Executing Awards
Solicitation Preparation		Evaluating Other Terms and Conditions	Award
		Competitive Range	Debriefing
Soliciting Offers		Discussions	Protests
Publicizing Proposed Procurements		Factfinding	Protests
Preaward Inquiries		Negotiation Strategy	Fraud
Prebid/Preproposal Conferences		Conducting Negotiations	Fraud And Exclusion
Amending Solicitations			
Cancelling Solicitations			

Solicitation

SOLICITATION--AWARD PHASE			
SOLICITATION	EVALUATION		AWARD
	Sealed Bidding	Negotiation	
Terms and Conditions			
Contract Types			
Letter Contracts			
Contract Financing			
Use of Government Property And Supply Sources			
Bonds (need for bonds)			
Solicitation Preparation			
Soliciting Offers			
Publicizing Proposed Procurements			
Preaward Inquiries			
Prebid/Preproposal Con- ferences			
Amending Solicitations			
Cancelling Solicitations			

52.216-1 Type of Contract

As prescribed in 16.105, complete and insert the following provision in requests for proposals (RFP's) and requests for quotations (RFQ's), unless the solicitation is for (a) a small purchase (see Part 13) or (b) information or planning purposes (see 15.405).

TYPE OF CONTRACT (APR 1984)

The Government contemplates award of a
[Contracting Officer insert specific type of contract] contract resulting from this solicitation.

(End of provision)

52.232-13 Notice of Progress Payments

The need for customary progress payments conforming to the regulations in Subpart 32.5 of the Federal Acquisition Regulation (FAR) will not be considered as a handicap or adverse factor in the award of the contract. The Progress Payments clause included in this solicitation will be included in any resulting contract, modified or altered if necessary in accordance with subsection 52.232-16 and its Alternate I of the FAR. Even though the clause is included in the contract, the clause shall be inoperative during any time the contractor's accounting system and controls are determined by the Government to be inadequate for segregation and accumulation of contract costs.

52.245-2 Gov't Property (Fixed-Price Contracts)

(a) Government-furnished property. (1) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the Government-furnished property described in the Schedule or specifications together with any related data and information that the Contractor may request and is reasonably required for the intended use of the property (hereinafter referred to as “Government-furnished property”).

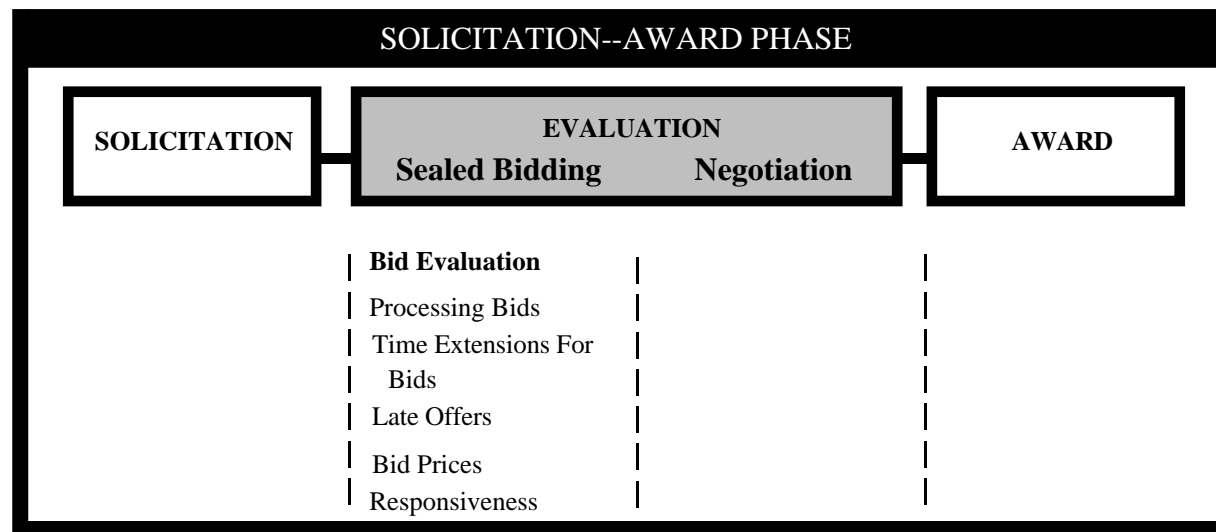
(2) The delivery or performance dates for this contract are based upon the expectation that Government-furnished property suitable for use (except for property furnished “as is”) will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the contract’s delivery or performance dates.

* * * * *

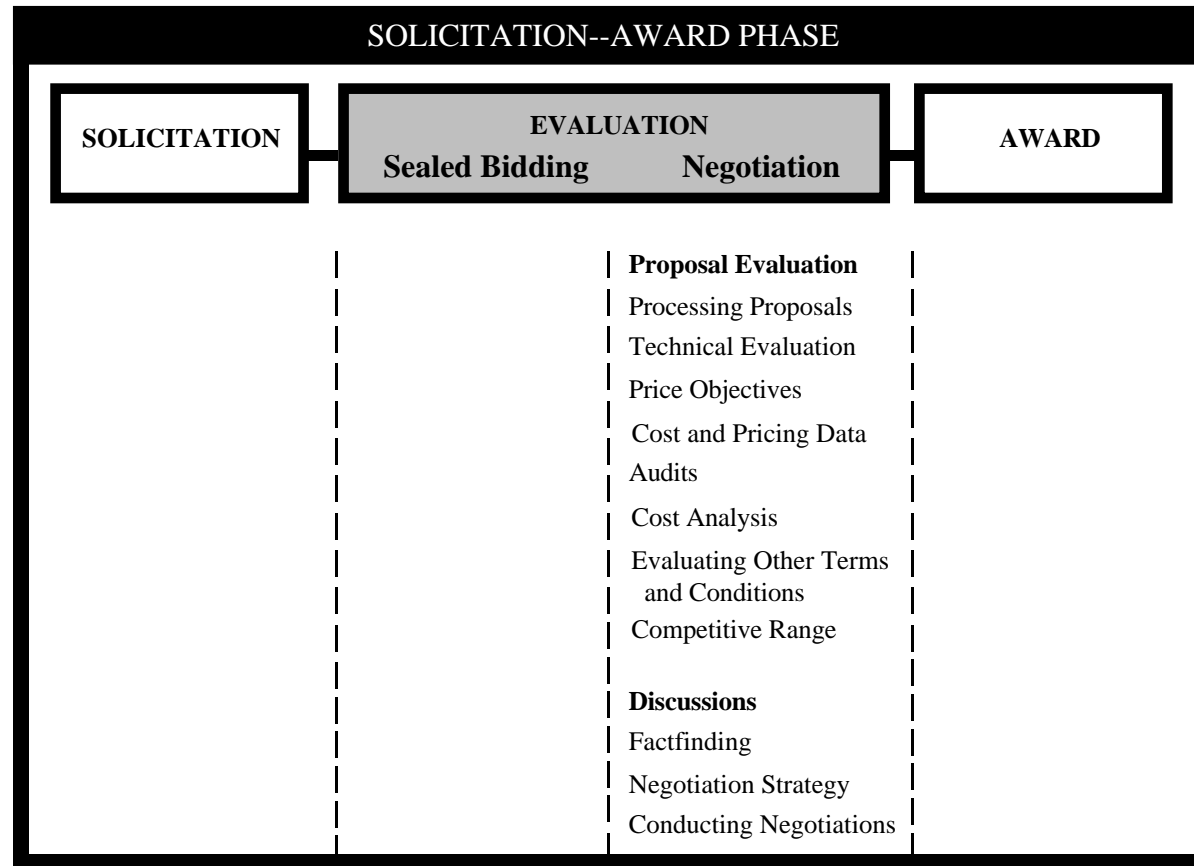
Amend or Cancel?

	Amend	Cancel
1. Requirement no longer exists		
2. Correct or clarify ambiguous solicitation		
3. Change quantity requirements, specifications, delivery requirements, or due date for offer		
4. Funds are no longer available		
5. Overall scope of proposed contract has changed substantially relative to the original synopsis and solicitation		

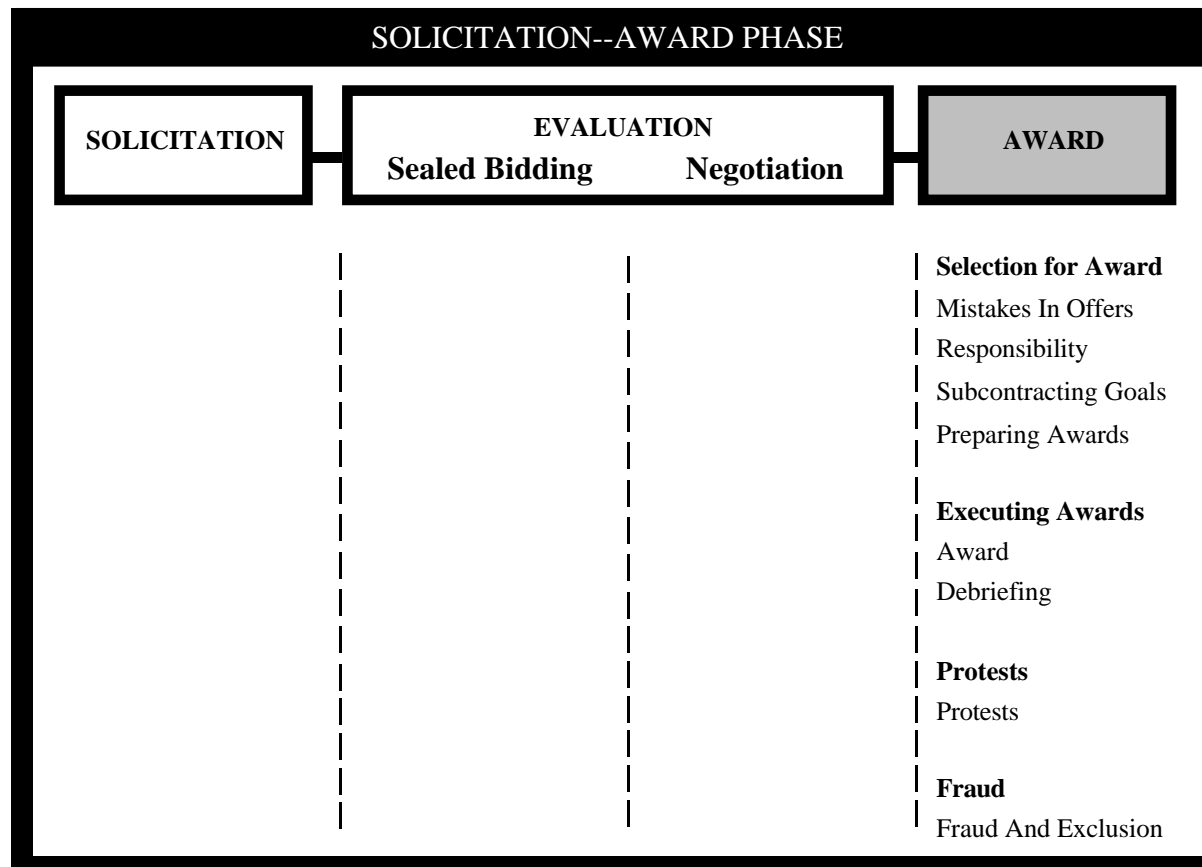
Evaluation (Sealed Bidding)



Evaluation (Negotiation)



Award



Mistakes in Bids

Spot the mistakes in JJ's bid

Examples:

1.	Line Item	Bid Prices
	Type A Nails (50 lbs)	\$12.00
	Type B Nails (50 lbs)	\$1220
	Type C Nails (50 lbs)	\$12.40
	Type D Nails (50 lbs)	\$4.45*

*** Next low bid for Type D nails: \$20.19**

- | | | |
|-----------|------------------------|---|
| 2. | Discounts | 1%/10 days, 2%/20 days, 5%/30 days |
| 3. | FOB Origin | \$3.00 |
| | FOB Destination | \$2.50 |

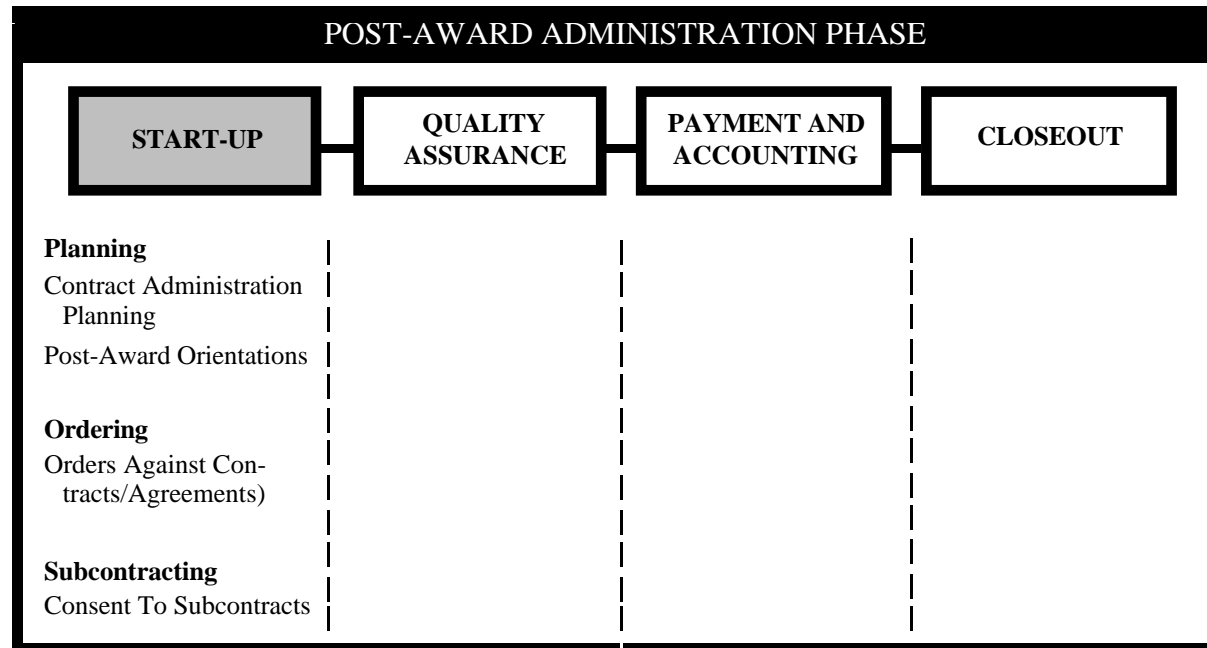
Solicitation-Award Phase

SOLICITATION--AWARD PHASE			
SOLICITATION	EVALUATION Sealed Bidding Negotiation		AWARD
Terms and Conditions	Bid Evaluation	Proposal Evaluation	Selection for Award
Contract Types	Processing Bids	Processing Proposals	Mistakes In Offers
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Soliciting Offers		Discussions	Protests
Publicizing Proposed Procurements		Factfinding	Protests
Preaward Inquiries		Negotiation Strategy	Fraud
Prebid/Preproposal Conferences		Conducting Negotiations	Fraud And Exclusion
Amending Solicitations			
Cancelling Solicitations			

Post-Award Administration Phase

POST-AWARD ADMINISTRATION PHASE			
START-UP	QUALITY ASSURANCE	PAYMENT AND ACCOUNTING	CLOSEOUT
Planning Contract Administration Planning Post-Award Orientations Ordering Orders Against Contracts/Agreements) Subcontracting Consent To Subcontracts	Monitoring and Problem Solving Monitoring, Inspection and Acceptance Delays Stop Work Remedies A. Selection B. Cure or show cause notice C. Liquidated damages D. Rejection of work E. Express warranty or guarantee F. Implied warranty G. Latent defects Property Property Administration Reporting Performance Problems Fraud And Exclusion	Payment Limitation Of Costs Invoices Unallowable Costs Assignment Of Claims Collecting Contractor Debts Progress Payments Price And Fee Adjustments Accounting and Defective Pricing Accounting And Cost Estimating Systems Cost Accounting Standards Defective Pricing	Closeout Closeout

Start-Up



ACO Functions

Which are NOT contract administration functions typically delegated to ACOs?

- 1. Conduct postaward orientation conferences**
- 2. Reduce scope of work to fit remaining available funds**
- 3. Administer security requirements, if any**
- 4. Perform property administration**
- 5. Perform technical surveillance**
- 6. Exercise an option**
- 7. Monitor overall performance to help ensure timely deliveries**

FAR 52.244-1 Subcontracts (Fixed-Price Contracts)

* * * * *

(a) This clause does not apply to firm-fixed-price contracts and fixed-price contracts with economic price adjustment. However, it does apply to subcontracts resulting from unpriced modifications to such contracts.

(b) . . . The Contractor shall notify the Contracting Officer reasonably in advance of entering into any subcontract if the Contractor does not have an approved purchasing system and if the subcontract—

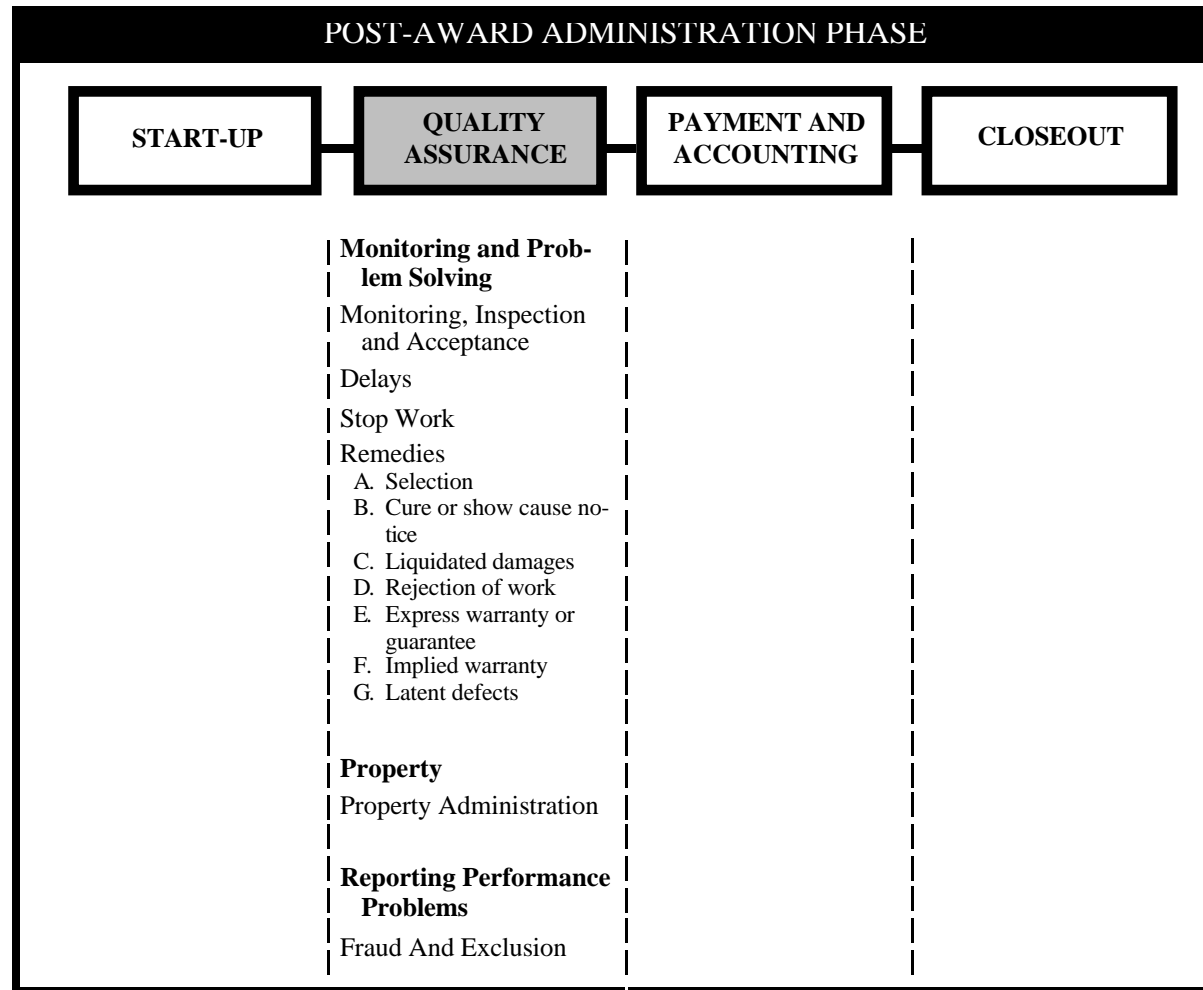
- (1) Is proposed to exceed \$100,000; or
- (2) Is one of a number of subcontracts with a single subcontractor, under this contract, for the same or related supplies or services, that in the aggregate are expected to exceed \$100,000.

* * * * *

(d) The Contractor shall obtain the Contracting Officer's written consent before placing any subcontract for which advance notification is required under paragraph (b) above. . . .

* * * * *

Quality Assurance



FAR 52.246-2 Inspection Of Supplies— Fixed-Price

* * * * *

(c) The Government has the right to inspect and test all supplies called for by the contract, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

* * * * *

(k) Inspections and tests by the Government do not relieve the Contractor of responsibility for defects or other failures to meet contract requirements discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the contract.

* * * * *

FAR 52.249-8 Default (Fixed-Price Supply and Service)

* * * * *

(c) . . . the Contractor shall not be liable . . . if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include

- (1) acts of God or of the public enemy,
- (2) acts of the Government in either its sovereign or contractual capacity,
- (3) fires,
- (4) floods,
- (5) epidemics,
- (6) quarantine restrictions,
- (7) strikes,
- (8) freight embargoes, and
- (9) unusually severe weather.

In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

* * * * *

FAR 52.212-13 Stop-Work Order

* * * * *

(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause.

* * * * *

(b) . . . The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if—

- (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
- (2) The Contractor asserts its right to the adjustment

* * * * *

Liquidated Damages

52.212-4 Liquidated Damages—Supplies, Services, or Research and Development.

* * * * *

(a) If the Contractor fails to deliver the supplies or perform the services within the time specified in this contract, or any extension, the Contractor shall, in place of actual damages, pay to the Government . . . for each calendar day of delay the sum of [Contracting Officer insert amount].

* * * * *

REJECTION OF WORK PRIOR TO ACCEPTANCE

52.246-2 Inspection Of Supplies—Fixed-Price

* * * * *

(f) The Government has the right either to reject or to require correction of nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with contract requirements. The Government may reject nonconforming supplies with or without disposition instructions.

* * * * *

(h) If the Contractor fails to promptly remove, replace, or correct rejected supplies . . . , the Government may either—

- (1) . . . remove, replace, or correct the supplies and charge the cost to the Contractor or
- (2) terminate the contract for default.

* * * * *

REJECTION OF WORK AFTER ACCEPTANCE

52.246-2 Inspection Of Supplies—Fixed-Price

* * * * *

(k) Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the contract.

(l) If acceptance is not conclusive for any of the reasons in paragraph (k) hereof, the Government . . . shall have the right to require the Contractor—

- (1) at no increase in contract price, to correct or replace the defective or non-conforming supplies . . . or
- (2) . . . repay such portion of the contract as is equitable under the circumstances if the Contracting Officer elects not to require correction or replacement. . . .

* * * * *

WARRANTY RIGHTS

52.246-17 Warranty of Supplies of a Noncomplex Nature.

* * * * *

(b) *Contractor's obligations.* (1) Notwithstanding inspection and acceptance by the Government of supplies furnished under this contract, . . . the Contractor warrants that for [X period of time after delivery] . . . — (i) All supplies furnished under this contract will be free from defects in material or workmanship and will conform with all requirements of this contract

* * * * *

(c) *Remedies available to the Government.* . . . (2) Within a reasonable time after . . . [providing written notice to the Contractor of any breach of warranties], the Contracting Officer may either—

- (i) Require, by written notice, the prompt correction or replacement of any supplies or parts thereof . . . ; or
- (ii) Retain such supplies and reduce the contract price by an amount equitable under the circumstances.

* * * * *

CURE NOTICE — T for D

52.249-8 Default (Fixed-Price Supply and Service)

* * * * *

(a)(1) The Government may . . . by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to—

- (i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;
- (ii) Make progress, so as to endanger performance of this contract (but see subparagraph (a)(2) below); or
- (iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) below).

(2) The Government's right to terminate this contract under subdivisions (1)(ii) and (1)(iii) above, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

* * * * *

52.245-2 Gov't Property (Fixed-Price Contracts)

* * * * *

(a) *Government-furnished property.* . . . (2) The delivery or performance dates for this contract are based upon the expectation that Government-furnished property suitable for use (except for property furnished “as is”) will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the contract’s delivery or performance dates.

* * * * *

(d) *Use of Government property.* The Government property shall be used only for performing this contract, unless otherwise provided in this contract or approved by the Contracting Officer.

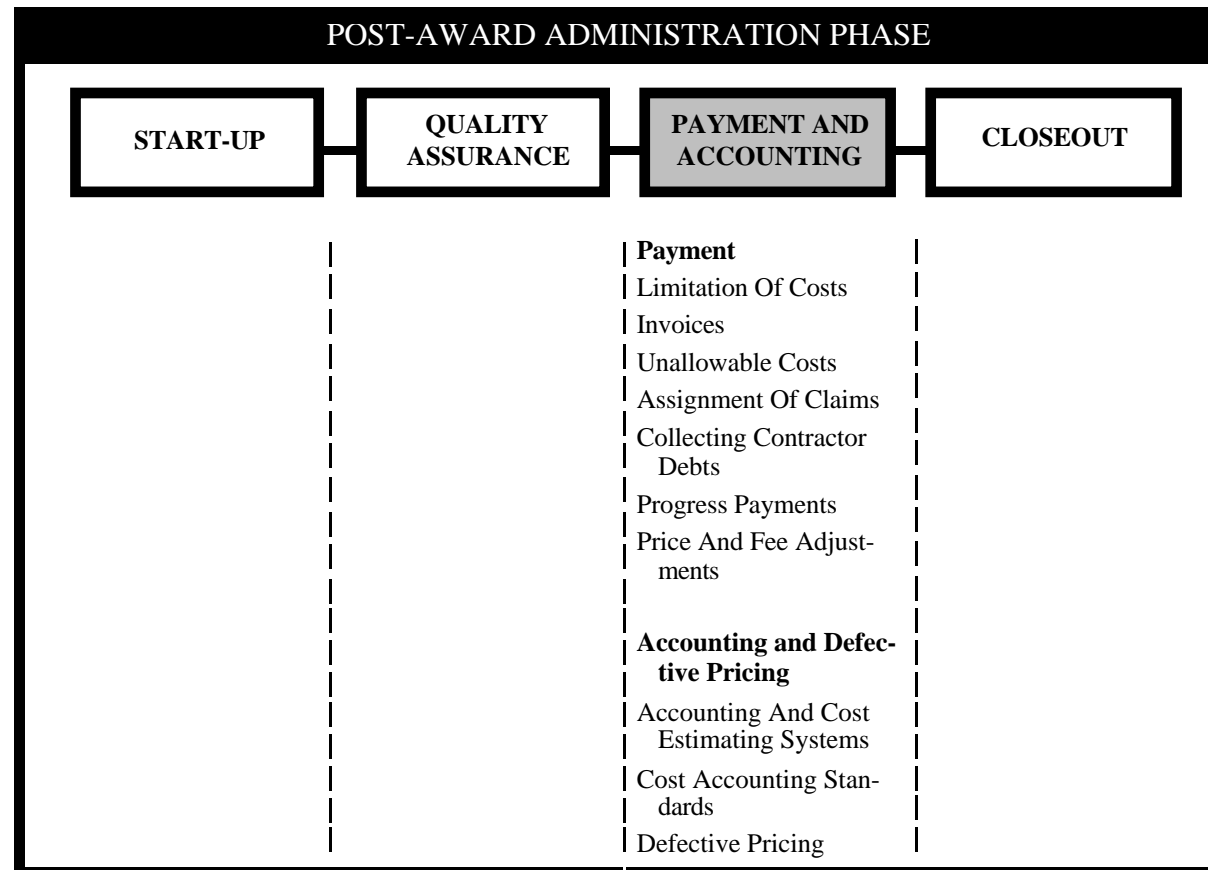
(e) *Property administration.* (1) The Contractor shall be responsible and accountable for all Government property provided under this contract (2) The Contractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound industrial practice and the applicable provisions of Subpart 45.5 of the FAR.

* * * * *

(g) *Risk of loss.* Unless otherwise provided in this contract, the Contractor assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, Government property upon its delivery to the Contractor

* * * * *

Payment and Accounting



SETTING FOR 8.3.1: PAYMENT

“The contractor—CLEANCO— signed a Fixed Price Contract with Economic Price Adjustment. Under that contract, CLEANCO has submitted a request for progress payments, along with an invoice for costs incurred during the prior month of work under the contract. The total amount of the invoice is \$145,000, an amount equal to 100% of incurred costs. Among the invoiced items is \$35,000 for a company car—a new Jaguar (\$35,000 being the sticker price).

“One day after submitting the invoice, a CLEANCO representative phoned the contracting officer to request payment directly to CLEANCO's bank. The CLEANCO representative also complained bitterly that CLEANCO's costs are going to greatly exceed the negotiated fixed price.

“Later on that same day:

1. An IRS auditor notified the Contracting Officer that CLEANCO owes the Government \$20,000 in back taxes.
2. The Contracting Officer received a phone call from J.P. Tool and Die, one of CLEANCO's suppliers. The President of J.P. Tool and Die complained that CLEANCO is 3 months delinquent in paying a bill of \$30,000 for parts that are being used in the deliverable.”

52.232-20 Limitation of Cost (Cost Reim. Contracts)

* * * * *

(b) The Contractor shall notify the Contracting Officer in writing whenever it has reason to believe that—

- (1) The costs the Contractor expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost specified in the Schedule; or
- (2) The total cost for the performance of this contract, exclusive of any fee, will be either greater or substantially less than had been previously estimated.

* * * * *

(d) Except as required by other provisions of this contract, specifically citing and stated to be an exception to this clause—

- (1) The Government is not obligated to reimburse the Contractor for costs incurred in excess of (i) the estimated cost specified in the Schedule and
- (2) The Contractor is not obligated to continue performance under this contract . . . or otherwise incur costs in excess of the estimated cost specified in the Schedule, until the Contracting Officer (i) notifies the Contractor in writing that the estimated cost has been increased and (ii) provides a revised estimated total cost of performing this contract.

* * * * *

Reimbursable Contractor Costs

Factor	Question	Example
Reasonableness	Is the cost reasonable -- is it what would have been incurred by a prudent person in the conduct of competitive business?	Is the contractor billing the Gov't for rent on unoccupied, unneeded space?
Allocability	Is the Gov't paying its fair share of indirect costs for work under the contract?	Is the Gov't being charged for 100% of the shop foreman's salary, when in fact the shop foreman also supervised work under five other contracts during the billing period?
Accounting Principles	Is the cost properly charged to the Gov't under CAS, or generally accepted accounting principles?	Per the "consistency" principle, has the contractor consistently included the costs of tooling in its manufacturing overhead pool from one billing period to the next?

52.232-16 Progress Payments

(Excerpts Related To Allowability)

* * * * *

(a) *Computation of amounts.* (1) Unless the Contractor requests a smaller amount, each progress payment shall be computed as ... 80 percent* of the Contractor's cumulative total costs under this contract ... less the sum of all previous progress payments made by the Government under this contract....

(2) The following conditions apply. . . (i) The costs of supplies and services purchased by the Contractor directly for this contract may be included only after payment by cash, check, or other form of actual payment.

(ii) Costs for the following may be included when incurred . . . :

(B) Direct labor, direct travel, and other direct in-house costs.

(C) Properly allocable and allowable indirect costs.

* * * * *

(3) The Contractor shall not include the following in [their invoices for progress payments] . . . Costs that are not reasonable, allocable to this contract, and consistent with sound and generally accepted accounting principles and practices.

* * * * *

52.232-16 Progress Payments

(Excerpts Related To Reducing Or Suspending Payments)

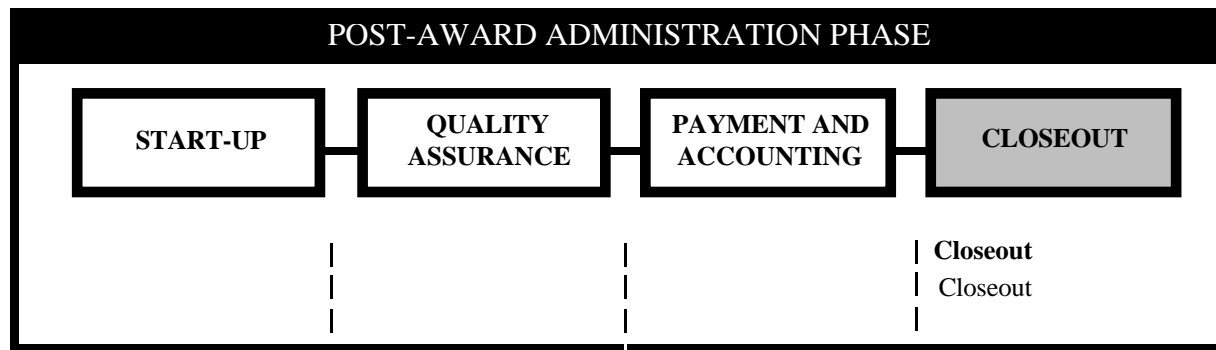
* * * * *

(c) *Reduction or suspension.* The Contracting Officer may reduce or suspend progress payments, increase the rate of liquidation, or take a combination of these actions, after finding on substantial evidence any of the following conditions:

- (1) The Contractor failed to comply with any material requirement of this contract
- (2) Performance of this contract is endangered by the Contractor's (i) failure to make progress or (ii) unsatisfactory financial condition.
- (3) Inventory allocated to this contract substantially exceeds reasonable requirements.
- (4) The Contractor is delinquent in payment of the costs of performing this contract in the ordinary course of business.
- (5) The unliquidated progress payments exceed the fair value of the work accomplished on the undelivered portion of this contract.

* * * * *

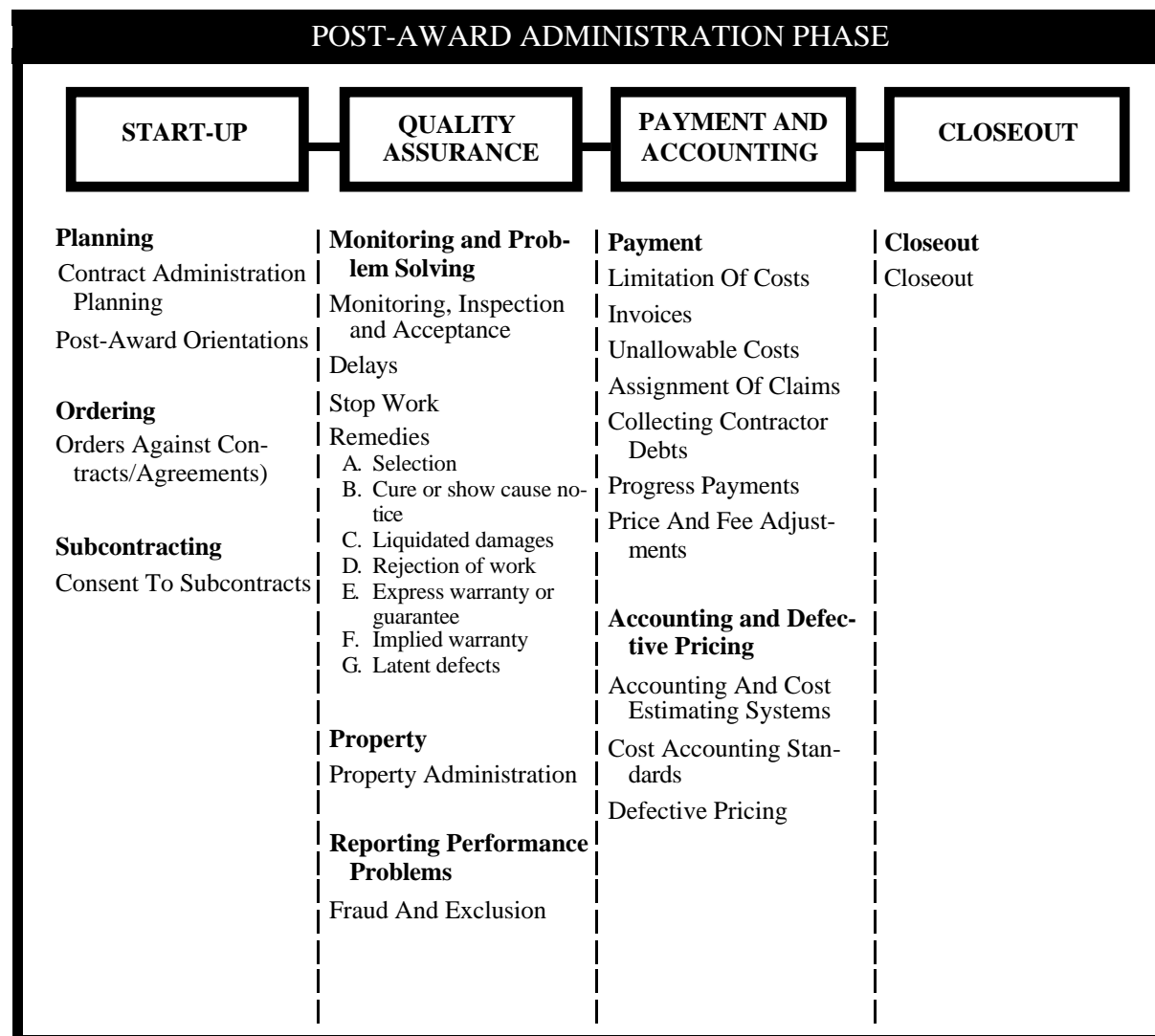
Closeout



Eight Steps to Contract Closeout

- 1. Verify that the contract is physically complete**
- 2. Obtain forms, reports, and clearances**
- 3. Verify that the Gov't and the contractor have satisfied other terms and conditions for closeout**
- 4. Settle any outstanding issues**

Post-Award Administration Phase



Reimbursable Contractor Costs

Factor	Question	Example
Terms of Contract	May the invoiced cost be paid under the contract's terms and conditions?	The Gov't might not have to reimburse the contractor for costs in excess of the total estimated cost in the schedule for a cost reimbursable contract.
Limitations in FAR Part 31	Is the Gov't prohibited by Part 31 from paying the cost as invoiced?	The Gov't is prohibited by FAR 31.205-51 from paying for the costs of alcoholic beverages.

Eight Steps to Contract Closeout

- 5. Verify that there are no outstanding claims or disputes**
- 6. Make final payment and de-obligate any remaining funds**
- 7. Prepare a contract completion statement and, based on the retention schedule in FAR 4.805, provide for the disposal of files**
- 8. Determine whether to invoke phase-in/phase-out rights when "Continuity of Services" are required**

Modifications, Terminations, and Claims

			SPECIALITIES
CONTRACT MODIFICATION	TERMINATION	CLAIMS	SPECIALIZED AREAS
Modifications/Options Contract Modifications A. Contract Modifications B. Exercising Options	Termination Termination A. Determine whether to terminate for convenience or default B. Terminating for convenience C. Terminating for default Bonds (administering bonds)	Claims Claims	ADP/Telecommunications Construction A&E Systems Procurement Simplified Purchasing Real Property Leasing

Contract Modification

			SPECIALTIES
CONTRACT MODIFICATION	TERMINATION	CLAIMS	SPECIALIZED AREAS
Modifications/Options Contract Modifications A. Contract Modifications B. Exercising Options			

FAR 52.243-1 Changes—Fixed-Price

* * * * *

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (1) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.
- (2) Method of shipment or packing.
- (3) Place of delivery.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

* * * * *

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

Termination

			SPECIALITIES
CONTRACT MODIFICATION	TERMINATION	CLAIMS	SPECIALIZED AREAS
	Termination Termination A. Determine whether to terminate for conven- ience or default B. Terminating for con- venience C. Terminating for default Bonds (administering bonds)		

FAR 52.249-2 Termination For Convenience Of The Gov't (Fixed Price)

(a) The Government may terminate performance of work under this contract ... if the Contracting Officer determines that a termination is in the Government's interest. ...

* * * * *

(d)-(e) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer. ... [If the Contractor and the Contracting Officer agree on the amount to be paid because of the termination], the contract shall be amended, and the Contractor paid the agreed amount. ...

(f) If the Contractor and the Contracting Officer fail to agree . . . , the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows ... (1) The contract price for completed supplies or services accepted by the Government ... [and] (2) The total of—

- (i) **The costs incurred in the performance of the work terminated...;**
- (ii) **The cost of settling and paying termination settlement proposals under terminated subcontracts ...; and**
- (iii) **A [reasonable] ...profit on subdivision (i) above ...**

* * * * *

(i) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under [¶f, among others]...

* * * * *

FAR 52.249-8 Default (Fixed-Price Supply and Service)

(a)(1) The Government may ... by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to—

- (i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;**
- (ii) Make progress, so as to endanger performance of this contract ... ; or**
- (iii) Perform any of the other provisions of this contract ...**

* * * * *

(b) If the Government terminates this contract in whole or in part, it may acquire ... supplies or services similar to those terminated, and the Contractor will be liable to the Government for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

(c) ... the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor...

* * * * *

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(h) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

Claims

SPECIALITIES			
CONTRACT MODIFICATION	TERMINATION	CLAIMS	SPECIALIZED AREAS
		Claims Claims	

FAR 52.233-1 Disputes

(a) - (b) This contract is subject to the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act). Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) “Claim,” as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract.

* * * * *

(d)(1) A claim by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer. (2) For Contractor claims exceeding \$50,000, the Contractor shall submit with the claim a certification ...

* * * * *

(f) The Contracting Officer’s decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

* * * * *

(h) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

Specialized Areas

			SPECIALITIES
CONTRACT MODIFICATION	TERMINATION	CLAIMS	SPECIALIZED AREAS
			ADP/Telecommunica- tions Construction A&E Systems Procurement Simplified Purchasing Real Property Leasing

Modifications, Terminations, and Claims

CONTRACT MODIFICATION	TERMINATION	CLAIMS	SPECIALIZED AREAS
Modifications/Options Contract Modifications A. Contract Modifications B. Exercising Options	Termination Termination A. Determine whether to terminate for convenience or default B. Terminating for convenience C. Terminating for default Bonds (administering bonds)	Claims Claims	ADP/Telecommunications Construction A&E Systems Procurement Simplified Purchasing Real Property Leasing

Standards of Conduct

Apply to all Government Personnel including:

- **Contracting Personnel**
- **Technical and Engineering Personnel**
- **Financial Personnel**
- **Clerical, Support, and Administrative Personnel**

Can you name any others?

PROHIBITED CONDUCT (Government)

- **Taking bribes**
- **Representing contractors**
- **Making or recommending official decisions in which you have a financial interest**
- **Conspiring to defraud the Government**

PROHIBITED CONDUCT (Government) (Continued)

- **Making false statements and covering up unethical conduct**
- **Disclosing source selection or proprietary information**
- **Contracting with Government employees**
- **Contracting with members of Congress**

PROHIBITED CONDUCT (Contractors)

- **Offers of employment**
- **Collusive pricing**
- **Contractor gratuities to Government Personnel**
- **Anti-trust violations**
- **Contingent fees**
- **Subcontractor kickbacks**
- **Unreasonable restrictions on subcontractor sales**